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Subject EPA comments on Draft POLA documents

EPA staff from Superfund, Environmental Review, and Wetlands Regulatory offices participated in an interagency meeting on August 3, 2006 regarding preparation of a draft Supplemental EIS to complete the Port of Los Angeles Channel Deepening Project. The meeting included representatives of the Los Angeles District USACE, the South Pacific Division USACE, the California Coastal Commission, the Port of LA, and a contractor to the Port/USACE. The purpose of the meeting was to discuss the most recent (7/31/06) Port/USACE administrative draft of the Purpose and Need description, and Description of Proposed Action and Alternatives, as well as to discuss issues associated with including Consolidated Slip in the SEIS. EPA staff also met with the project proponents and stakeholders on August 15, 2006. In these meetings, EPA expressed strong concerns about the draft documents. EPA also expressed concern with the proposed project, particularly in three areas: NEPA adequacy, CWA Section 404(b)(1) compliance, and Superfund. Our concerns in each area are summarized below.

### NEPA Adequacy

The Purpose and Need document (P&N) we reviewed needs significant work, both substantive and editorial, before it would be an adequate basis for the public draft SEIS. Although the P&N reflects the dual need set forth in the October 21, 2005 NOI (namely, to provide additional disposal capacity to complete the Channel Deepening Project, and to maximize beneficial use of that material in fills for eventual terminal use and for environmental enhancements), the P&N only discusses capacity options. It does not discuss or support the necessity of any specific fills for "eventual terminal use." This is a major shortcoming from a NEPA standpoint.

Also, the P&N focuses on 4 million cubic yards as the disposal "need", even though the latest information seems to indicate that much less material - less than 3 million cy - will remain to be managed from completion of the federal Channel Deepening Project itself (p. 2-6). The additional volume is associated with projects and features that have not yet been authorized, and are not part of the federal Channel Deepening project. The need statement should be amended to primarily reflect only the federal Channel Deepening volume (3 million cy or less), while noting that additional volume may come from other features, if authorized as a result of the SEIS evaluation.

We also note that the draft document includes numerous inconsistencies and errors. For example: volumes and figures don't match between the text and tables; numbers don't add up correctly within some tables; "Non-Pay Excess" is described and calculated in a manner inconsistent with recently published national USACE guidance on overdredging; insufficient justification is provided for the proposed "Fill:Cut Balance" factor; additional sand mining is discussed as though it has already been approved, although it has not; and insufficient justification is given for either the cut or fill volumes ascribed to work in Consolidated Slip. These inconsistencies and errors are of more than editorial concern. They raise serious questions about the actual volume of material to be managed, and therefore, directly affect the acreage of fill needed. Because this determination drives minimization and avoidance measures, these issues will directly impact the adequacy of the SEIS evaluation. If the draft SEIS were issued as currently written, these shortcomings would be serious enough to warrant an adverse rating from EPA under the CWA Section 309 process.

As we have stated in our meetings, it is important to analyze the secondary and cumulative impacts associated with this project. Secondary impacts will result from the use of the existing land and the proposed landfill. We recognize that specific information on terminal development and use will not be

available at this time. However, the EIS should cover the range of potential land uses and estimated impacts to air quality, water quality, land use, economics, habitat, wildlife, and other resources, when combined with the multiple projects in the region.

#### **CWA Section 404**

As we have expressed consistently, we remain concerned about minimizing both the volume of dredged material proposed to be discharged, and the impacts of the fill proposed to be created. In particular, we are quite skeptical that expansion of Pier 300 can be shown to be the Least Environmentally Damaging Practicable Alternative (LEDPA) for any of the Channel Deepening Project material. Filling this area would destroy 30-40 acres of eelgrass in a key foraging area for arguably most important colony of the endangered California least tern. The CWA regulations [404(b)(1) Guidelines] presume that a less damaging alternative to filling this special aquatic site exists and is practicable. Nothing presented to EPA to date supports the contention that fill in this area is necessarily unavoidable, let alone in the overall public interest, at this time.

We have similar CWA 404 concerns about proposed fill in Consolidated Slip. The draft Description of Proposed Action and Alternatives proposes 549,000 cy of fill to create a particular cap design. However, no specific design has been considered or approved by EPA for this Superfund site. As we have said, it is premature for the SEIS to include this specific fill volume as a "need" for the federal Channel Deepening Project to address. We are pleased that the Port has decided to include this as a separable component of the alternatives considered in the EIS.

#### **Consolidated Slip Superfund Site**

At our meeting in February 2006, the Port and USACE committed to initiate significant coordination with EPA's Superfund office concerning both planning and specific technical studies regarding remediation options at Consolidated Slip. No such coordination had occurred by the time of this meeting 6 months later. We are pleased that the Port renewed its commitment to coordinate, and has now begun to follow through on that commitment. Nevertheless, EPA is not yet in a position to comment on the adequacy of the specific excavation and capping proposal put forth in the draft Description of Proposed Action and Alternatives document. Therefore, it is premature for the draft SEIS to focus on this, or any other specific design or volume.

It would be more appropriate for the draft SEIS to: (1) acknowledge that planning is ongoing for what to do at Consolidated Slip; (2) that excavation/removal of some contaminated material may be desirable; (3) that a proposed feature of the Channel Deepening Project (the Berth 243-245 containment area) could appropriately manage up to XXX volume of this kind of material, once decisions are made; and (4) YYY volume of clean dredged material could be made available (by stockpiling in various ways, if necessary) from the Channel Deepening Project for capping if needed once decisions are made. This approach avoids unnecessary complications between the Port/USACE planning and construction timelines for the Channel Deepening Project, while at the same time allowing any remediation solution decided on to be implemented immediately and at lowest cost (because an appropriate containment site and cap material would already be available). Additionally, the SEIS must acknowledge that EPA Superfund has lead authority to make clean-up or removal decisions regarding Montrose-related contamination in the Consolidated Slip.

Another alternative would be for the draft SEIS to discuss a range of potential excavation and fill volumes, and discuss how those volumes could match up with suitable disposal capacity and fill volumes potentially available from the Channel Deepening Project - but WITHOUT presuming a particular remediation design or that the timeframe for any remediation must directly match that of the Channel Deepening Project.

If here are any questions about these comments, please call the appropriate EPA program contact listed below:

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